

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

CHARLES LYNN MURRAY, JR.,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

CASE NO. 15-CV-5720 RJB

96-CR-5367 RJB

ORDER ON MOTION TO  
RECONSIDER ORDER ON  
MOTION UNDER 28 U.S.C. § 2255  
TO VACATE, SET ASIDE, OR  
CORRECT SENTENCE BY A  
PERSON IN FEDERAL CUSTODY

This matter comes before the Court on the government's Motion for Reconsideration of Order Granting Petitioner's Motion to Vacate, Set Aside, or Correct Sentence under 28 U.S.C. § 2255. Dkt. 18. The Court has considered the pleadings filed regarding the motion, and the remainder of the file herein.

The facts are in the November 19, 2015 Order on Petitioner's Motion to Vacate, Set Aside, or Correct Sentence under 28 U.S.C. § 2255 (Dkt. 16, at 1-4) and are adopted here. That Order granted Petitioner's motion.

1 The government now files a Motion for Reconsideration (Dkt. 18) arguing that the Court  
2 “overlooked or misapprehended” its arguments and the holdings of various cases. It argues that  
3 Petitioner’s claims are procedurally defaulted, that he has not shown that a *Johnson v. United*  
4 *States*, 135 S.Ct. 2551 (2015) error occurred, and any claim under *Descamps* is time barred. Dkt.  
5 18.

6 Local Rule W.D. Wash. 7(h)(1) provides: “[m]otions for reconsideration are disfavored. The  
7 court will ordinarily deny such motions in the absence of a showing of manifest error in the prior  
8 ruling or a showing of new facts or legal authority which could not have been brought to its  
9 attention earlier with reasonable diligence.”

10 The government’s motion for reconsideration (Dkt. 18) should be denied. It has not  
11 shown a “manifest error in the prior ruling.” It has not shown “new facts or legal authority  
12 which could not have been brought to the [Court’s] attention earlier with reasonable diligence.”

13 It argues that the Court failed to consider the holdings of (or its argument regarding)  
14 *Marrero v. Ives*, 682 F.3d 1190, 1193-94 (9th Cir. 2012) and its application to *Bousley v. United*  
15 *States*, 523 U.S. 614 623 (1998). These cases should not alter the Court’s decision. *Marrero*,  
16 which was a case addressing sentence enhancements under the guidelines, was not a case where  
17 the law had changed, unlike here with *Johnson*. Further, it specifically held that it was not  
18 resolving the “question whether a petitioner may ever be actually innocent of a noncapital  
19 sentence for the purpose of qualifying for the [§2241] escape hatch.” *Id.*, at 1193. Moreover, the  
20 Court there recognized that other circuits have “suggested that a petitioner may qualify for the  
21 escape hatch if he received a sentence for which he was statutorily ineligible” or “that a  
22 petitioner might be actually innocent of a sentencing enhancement if the sentence resulted from a  
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1 constitutional violation.” *Id.*, at 1194-1195. Petitioner asserted both here. The decision to  
2 excuse Petitioner from the procedural default should be affirmed.

3 The government argues that Petitioner did not show that an error under *Johnson* was  
4 committed, and again maintains that any claim under *Descamps* is time barred. Petitioner  
5 sufficiently showed that a *Johnson* error occurred. Further, “actual innocence, if proved, serves  
6 as a gateway through which a petitioner may pass whether the impediment is a procedural bar  
7 [or] . . . expiration of the statute of limitations.” *McQuiggin v. Perkins*, 133 S.Ct. 1924, 1928  
8 (2013). Petitioner’s showing of “actual innocence” of being an “armed career criminal” is  
9 sufficient to excuse both the procedural bar or time bar. The decision to grant his petition should  
10 be affirmed.

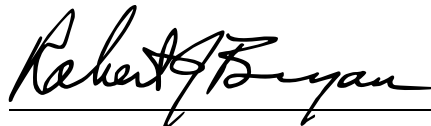
### 11 ORDER

12 Therefore, it is hereby **ORDERED** that:

- 13 • The Motion for Reconsideration of Order Granting Petitioner’s Motion to Vacate, Set  
14 Aside, or Correct Sentence under 28 U.S.C. § 2255 (Dkt. 18) is **DENIED**;
- 15 • The November 19, 2015 Order on Petitioner’s Motion to Vacate, Set Aside, or Correct  
16 Sentence under 28 U.S.C. § 2255 (Dkt. 16) is **AFFIRMED**.

17 The Clerk is directed to send uncertified copies of this Order to all counsel of record and  
18 to any party appearing pro se at said party’s last known address.

19 Dated this 20<sup>th</sup> day of November, 2015.

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22 ROBERT J. BRYAN  
23 United States District Judge  
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